

STATE OF MICHIGAN  
IN THE SUPREME COURT

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CLIFFORD DURELL MCKEE,

Defendant-Appellant.

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SUPREME COURT NO. 157581

COURT OF APPEALS NO. 336598

CIRCUIT COURT NO. 15-002787-FC

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APPELLEE'S APPENDIX

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# Order

Michigan Supreme Court  
Lansing, Michigan

October 28, 2020

Bridget M. McCormack,  
Chief Justice

157581  
157646

David F. Viviano,  
Chief Justice Pro Tem

Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 157581  
COA: 336598  
Jackson CC: 15-002787-FC

CLIFFORD DURELL McKEE,  
Defendant-Appellant.

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 157646  
COA: 333720  
Jackson CC: 15-002788-FC

RODNEY JAMAR McKEE,  
Defendant-Appellant.

By order of May 22, 2019, the applications for leave to appeal the February 27, 2018 judgment of the Court of Appeals were held in abeyance pending the decisions in *People v Furline* (Docket No. 158296) and *People v Jenkins* (Docket No. 158298). On order of the Court, the cases having been decided on March 12, 2020, 505 Mich 16 (2020), the applications are again considered, and we direct the Clerk to schedule oral argument on the applications. MCR 7.305(H)(1).

We further ORDER the Jackson Circuit Court, in accordance with Administrative Order 2003-03, to determine whether defendant Clifford Durell McKee is indigent and, if so, to appoint the State Appellate Defender Office, if feasible, to represent the defendant in this Court.

The appellants shall file a supplemental brief within 42 days of the date of the order appointing counsel addressing whether the trial court erred in failing to grant the appellants' motion for a mistrial because their substantial rights were impaired by the admission of a codefendant's statement to the police. See *Zafiro v United States*, 506 US 534, 539 (1993), and *People v Hana*, 447 Mich 325, 345-346 (1994). In addition to the brief, the appellants shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellants' brief. The appellee shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellants. A reply, if any, must be filed by the appellants within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

The total time allowed for oral argument shall be 40 minutes: 20 minutes for the appellants to be divided at their discretion and 20 minutes for the appellee. MCR 7.314(B)(2).

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae. Motions for permission to file briefs amicus curiae and briefs amicus curiae regarding these cases should be filed in *People v Clifford Durell McKee*, Docket No. 157581, only and served on the parties in both cases.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 28, 2020

Clerk

- 1 Q And this is still you and Ruby and Royce?
- 2 A Yes.
- 3 Q And what do you see?
- 4 A Frannie's on the ground and about her shoulders up is under
- 5 the bed so we couldn't see her face.
- 6 Q You said her head and her shoulder are kind of up under the
- 7 bed so you couldn't see her face, what could you see?
- 8 A We could see from here down and she was in her robe.
- 9 Q Did she have any clothing on?
- 10 A No, just her robe.
- 11 Q Just her robe? Could you see that anything that was wrong?
- 12 A She was just covered in blood.
- 13 Q Did you --(inaudible)?
- 14 A Just stayed behind.
- 15 Q Then what did you do?
- 16 A We just stared and then we went downstairs.
- 17 Q Did all three of you go back downstairs?
- 18 A Yes.
- 19 Q What did you do --(inaudible)?
- 20 A I told my dad that she was on the floor.
- 21 Q He get -- (inaudible)?
- 22 A No.
- 23 Q (Inaudible)?
- 24 A I told him he needs to go up there. I said she's on the
- 25 floor and he said she was on the floor when I came home and

1           then -- so we went back up there and it was still the same.  
2       Q       So you and Ruby and Royce, all three of you went --  
3           (inaudible)?  
4       A       Yes.  
5       Q       Do you get closer to her this time?  
6       A       Not really, we just kinda looked around trying to see what  
7           was wrong.  
8       Q       Did you try to touch her at all?  
9       A       No.  
10      Q       Did you think about it?  
11      A       Kind of, but we didn't want to.  
12      Q       Why not?  
13      A       Cuz it didn't -- it was scary.  
14      Q       What happened -- (inaudible)?  
15      A       Then we went downstairs and I told him he needs to go up  
16           there and so he said, "Okay, I'm going," and then he got up  
17           and went upstairs, and we tried to follow him but he told  
18           us to stay back.  
19      Q       At that point had you told him that there was some blood up  
20           there?  
21      A       No.  
22      Q       No? Alexis, what did you think might be wrong with  
23           Frannie?  
24      A       I thought she started her period and was just on the floor,  
25           but I didn't know.

1 Q What did you like about that particular neighborhood?

2 A It was a subdivision. It was a really nice, quiet area, a  
3 lot of people around there seemed upper class and we felt  
4 safe and it was just a beautiful area.

5 Q Did you guys ever joke about moving in there?

6 A Yes. We would joke and say we're probably the ones  
7 bringing the property value of everybody in the  
8 neighborhood down.

9 Q Do you remember when you guys moved there?

10 A June 13<sup>th</sup>, 2014.

11 Q How did you guys move all your stuff?

12 A U-Haul and a bunch of help, offered some of my friends and  
13 her friends, pizza and beer.

14 Q What about Ryan Marshall, did he help you move?

15 A Yes.

16 Q So that would have been from the Oaks --

17 A From the Oaks to Timbercrest, to 5220.

18 Q He never lived there with you?

19 A Not once.

20 Q Eric, you mentioned that that neighborhood in your mind was  
21 a safe neighborhood, talk to me for a second about the  
22 doors on the house at 5220, were they locked? Did you guys  
23 lock the doors?

24 A Not typically. The front door we found out maybe after a  
25 month of living there, what we thought we were locking,

1           they didn't have deadbolts first off, but what we thought  
2           we were locking, that the front door -- you could actually  
3           just --(fist on desk)-- and it would open right up. It  
4           wasn't latching properly. We had to get that fixed. It  
5           was on a to-do list but it wasn't at the top because who  
6           was gonna do anything in that neighborhood?

7       Q     What about that big garage door, was that always kept down  
8           or up?

9       A     Generally, it was -- it was up. We didn't have any fear of  
10          people stealing what little we had.

11      Q     What about August 9<sup>th</sup> and 10<sup>th</sup>, was it left up those days?

12      A     I -- I can't recall. I would -- it probably was because it  
13          generally was up.

14      Q     But no specific recollection for you either way?

15      A     No.

16      Q     If it shows that it's up in the pictures from the crime  
17          scene do you think that means that it was left up?

18      A     Unless somebody else opened it, like a detective or  
19          something, doing their investigation, because I know I  
20          didn't touch it. I went through the front door that --  
21          that morning.

22      Q     Okay, so you never touched it that day?

23      A     No.

24      Q     Okay. Eric, there was somebody here in court with Alexis  
25          when she testified, do you know who that was?



1 and upper chest. There were approximately 20 stab wounds  
2 and multiple sharp wounds on the neck.

3 Q When you say multiple sharp wounds, is that different from  
4 the 20 stab wounds you've identified?

5 A Yes. I call them sharp wounds when there is a large  
6 surface (ph) on the skin but not too deep. It's less deep  
7 than the long area. So, I call these superficial cuts,  
8 although it's into the soft tissue of the person.

9 Q And I'm sorry, which ones were the superficial ones?

10 A On the -- the sharp wounds on the right side of the neck.

11 Q Is there any way to quantify -- you called it to multiple,  
12 can you count the number of slices like you did the stabs?

13 A Yes. Sometimes it's kind of difficult to say how many  
14 cuts. I could say four but could be only one that is  
15 coming and because of the bending of the skin then it's the  
16 same one that continues, so that is reason why I took  
17 pictures to show how they look like in case there is a  
18 question regarding those.

19 Q So you did take pictures?

20 A Yes.

21 Q Okay. Did you measure any of these wounds?

22 A Yes. I -- I said in the -- in the -- in my report that  
23 there was about four -- four inches long.

24 Q And what about did you -- were you able to give width --

25 A Yes.

1 Jackson, Michigan

2 Thursday, May 26, 2016 - 9:25:02 a.m.

3 THE COURT: Please be seated.

4 Okay, Mr. Brandt, let's make a record with  
5 regard to the -- Mr. McKee.

6 MR. BRANDT: Thank you. Your Honor, about a  
7 week ago I got a letter from my client indicating that he  
8 did not wish to participate in the sentencing portion of  
9 this case. I went over and spent about 40 minutes with him  
10 yesterday, gave him the presentence report. He indicated  
11 again to me yesterday that it was his intention not to come  
12 in today. I did not try to dissuade him from that or  
13 persuade him to be there. I just listened to what he said,  
14 but he was very adamant yesterday morning that he did not  
15 and would not come in.

16 THE COURT: Officer Cherry, I need you to  
17 take the stand for a second. Do you swear to tell the  
18 truth, the whole truth and nothing but the truth so help you  
19 God?

20 MR. CHERRY: I do.

21 DONOVAN CHERRY

22 (At 9:26:24 a.m., witness sworn, testified as follows):

23 THE COURT: Be seated. It's my understanding  
24 that after multiple discussions the last option was going to  
25 be to tase Mr. McKee, pepper spray him before he could be

1 brought over.

2 THE WITNESS: That -- that's correct.

3 THE COURT: And even though there was gonna  
4 be multiple officers, there was a likelihood that somebody  
5 very well could be injured?

6 THE WITNESS: That is correct.

7 THE COURT: Okay. Well, given those -- I  
8 thought that from the court's standpoint, given the nature  
9 of the offenses, I wanted him here to face the family that  
10 had the great loss in this matter. He knows pretty much  
11 what the sentence is gonna be. Given the fact that they  
12 were going to pretty much have to tase him, pepper spray him  
13 and probably chain him to a chair to get him over here and  
14 put him on a cart strapped in and wheel him over, I've  
15 chosen not to have him brought over. I don't want to see an  
16 officer get hurt for something such as that.

17 So, given those circumstances, I'm not gonna  
18 have him brought over. Okay?

19 We ready to go on -- any preference on one at  
20 a time, or Butler and --

21 MS. REZMIERSKI: In my mind I had imagined  
22 them altogether, but, your Honor, I -- discretion of the  
23 court. Thank you for asking.

24 THE COURT: Let's do Rod -- Rodney and Cortez  
25 and for the record we'll do Clifford at the same time.